D.B. CIVIL SPECIAL APPEAL (W) NO.307/2007
The State of Rajasthan Vs. Shri Sohan Lal & Anr.

Date : 18.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. B.S. Sandhu for the respondents.

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Heard learned counsel for the parties.

This appeal is directed against the order of learned Single Judge dated 21.11.2005 by which the learned Single Judge has allowed the writ petition filed by the respondents and restored the case No.252/1986 to its original number before the Collector Sriganganagar for deciding the same after affording an opportunity of hearing to the petitioner by permitting him to place the material in support of his submissions.

The date was fixed before the Collector, Sriganganagar on 4.1.2006.

The facts of the case are that the petitioner

has been made an allotment of land in question on the basis of fact that he was in cultivatory possession of the land in question prior to year 1955 that is to say before the commencement of Rajasthan Tenancy Act, 1955. On that premise 25 bighas of land was alloted as free of cost and 25.10 bighas on price.

On complaint made in 1972, the proceeding was commenced inter alia on the ground that the petitioner was not in cultivatory possession of the land in question before the year 1955. The order of allotment made on the basis of cultivatory possession prior to 1955 was cancelled by the impugned order in the writ petition inter alia on the ground that the petitioner has failed to produce evidence in support of such claim.

It appears that during the pendency of the writ petition, the record of the holdings was produced before the learned Single Judge by the present appellant on direction being issued by the Court and from the perusal of the record the learned Single Judge was of the

opinion that at least it can be said that the petitioner's ancestors were in possession of the land in question in 1953 as well as 1956 and, therefore, the matter is required to be examined on the basis of available record which was in possession of the present appellants and since the record has not been examined by the Collector and the petitioner was not given opportunity of hearing to sustain the allotment made in his favour on the basis of possession in 1955 and on that premises, the aforesaid order was made by the learned Single Judge.

It is contended by the learned counsel for the appellant that since the material which came before the Court was not before the authorities below, the Court ought not to have interfered with the order of the Revenue Authorities while exercising the jurisdiction under Article 226 of the Constitution.

Suffice it to say that the record which was produced before the learned Single Judge was by the present appellants and emanate from their own custody, about the veracity of which there cannot be any doubt, and if from the record produced by the present

appellants themselves, it appears that the land in question was in possession of the petitioner's ancestor in 1953 and 1956, the order of the learned Single Judge remanding the case back to the Collector for examining the whole issue in the light of the existing record which is within the province of the Collector himself cannot be said to be erroneous.

The appeal, accordingly, fails and is hereby dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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